



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

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August 30, 2011

Captain David Smith
Homicide Bureau
Los Angeles County Sheriff's Department
5747 Rickenbacker Road
Commerce, California 90040

Re: J.S.I.D. File #11-0117
L.A.S.D. File #011-02295-0278-055

Dear Captain Smith,

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 14, 2011, non-fatal shooting of Osvaldo Ureta by Los Angeles County Sheriff's Deputies Anthony Forlano, Raymond Mendoza and Michael Hernandez. It is our conclusion that Deputies Forlano, Mendoza and Hernandez acted in lawful self-defense and defense of another.

The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department (LASD), submitted to this office by Detective Frank Salerno, LASD Homicide Bureau. The District Attorney's Command Center was notified of the shooting on February 14, 2011, at approximately 10:02 p.m. The District Attorney Response Team (DART), comprised of Deputy District Attorney Fernando Guzman and District Attorney Senior Investigator Debra Winston, responded and was given a briefing and a walk-through of the scene. Deputies Forlano, Mendoza and Hernandez provided voluntary statements to investigators which were considered as part of this analysis.

FACTUAL ANALYSIS

On February 14, 2011, at approximately 8:00 p.m., LASD Deputies Anthony Forlano and Raymond Mendoza received a call on their Mobile Digital Terminal (MDT) indicating that a white 2004

Cadillac Escalade had been reported stolen.¹ Approximately 15 minutes later they saw the Escalade while traveling north on Townsend Avenue. The Escalade was traveling south on Townsend Avenue toward the deputies' vehicle.²

Townsend Avenue is a narrow street with barely enough room for two vehicles to pass each other. As the two vehicles approached each other at approximately 4-5 miles per hour, the deputies noticed that the last three numbers of the license number matched those of the stolen Escalade. The front left fender of the Escalade brushed against the front left push bar on the patrol vehicle. The Escalade continued moving as Forlano yelled to the driver to stop the Escalade.³ The driver, later identified as Osvaldo Ureta, turned his upper body to the left, raised his right arm and pointed a small black semiautomatic handgun at the deputies. Ureta accelerated southbound side-swiping the rear quarter panel of the patrol vehicle with the Escalade.⁴

Forlano drove the patrol vehicle in reverse to Olympic Boulevard where he turned the vehicle and initiated a pursuit of the Escalade with lights and siren. Forlano transmitted a radio broadcast indicating that they were in pursuit of an assault with a deadly weapon suspect.⁵

During the pursuit Ureta drove through residential and commercial areas, and entered and exited the Interstate 5 Freeway. The pursuit lasted approximately 6 minutes and covered approximately 4.5 miles. Ureta ran through 9 stop signs, 7 red lights and reached speeds of up to 90 miles per hour. He weaved in and out of traffic and narrowly missed striking pedestrians and vehicles. Ureta struck at least one parked vehicle.

After exiting the freeway Ureta was traveling north on Sunol Drive when he abruptly stopped the Escalade, causing the patrol vehicle to strike the rear end. Ureta sped away again turning west on Boswell Place. Immediately after turning onto Boswell Place, Ureta again stopped abruptly. Forlano swerved to the left and stopped the patrol vehicle on the left side of the Escalade.

Deputies Hernandez and Moran joined the pursuit on Olympic Boulevard and was the only other patrol unit present when it ended.⁶ When Unit 25A swerved to the left of the Escalade, Hernandez stopped his vehicle on the right side of the Escalade. The front of both patrol vehicles was parallel to the front windshield of the Escalade. The patrol vehicles were within 1 foot of the Escalade.

Immediately after the 3 vehicles stopped Forlano and Mendoza saw Ureta turn his upper body to the left and raise his right arm toward the deputies. This was the same motion Ureta made when pointing the handgun at them earlier. Believing Ureta was about to discharge a handgun in their direction, Forlano fired 8-10 rounds at Ureta. Mendoza simultaneously fired 3-4 rounds at Ureta.

¹ Forlano and Mendoza were working Patrol Unit 25A.

² The deputies were wearing standard issue LASD patrol uniforms and driving a marked black and white patrol vehicle.

³ The driver's windows of both vehicles were open.

⁴ Ureta was the sole occupant of the Escalade.

⁵ The deadly weapon he was referring to was the handgun, although he did not state this.

⁶ Hernandez was the driver and Moran the passenger of Unit 24, a marked black and white patrol vehicle.

Hernandez did not see Ureta, but heard gunshots and glass breaking. Believing that Ureta was firing a handgun at him, Hernandez fired 2-3 rounds at Ureta. Moran retrieved a shotgun from the patrol vehicle and moved to a position on the left side of Unit 25A.

Ureta had his left hand on the steering wheel and his right on the gear shift. Although he had been shot several times and appeared to be bleeding, he continued to attempt to drive the Escalade. He struck the patrol vehicles several times as he did so. The Escalade was wedged between the patrol cars and had a flat tire.

Other LASD units arrived to assist. Ureta continually ignored deputies' orders to show his hands and exit the vehicle. As deputies approached him he abruptly dropped his hands toward his waist. Deputy Rodney Gutierrez deployed his Tazer which appeared to disable Ureta. He was removed from the Escalade and handcuffed without further incident.

Further Investigation

No handgun was found in the Escalade. However, both Forlano and Mendoza stated that they saw a small semiautomatic handgun in Ureta's right hand prior to the initiation of the pursuit. The deputies involved lost sight of the Escalade several times during the pursuit. A search of the 4.5 mile pursuit route failed to produce a handgun.

Involved Deputies' Statements

The 4 deputies present at the scene of the shooting were interviewed. Their statements were consistent in every material aspect.

Witness Statements

Deputies canvassed the neighborhood immediately following the incident and contacted 29 persons. Seven persons stated that they did not hear or see the incident. Twenty-one persons heard only the sound of gunshots, but did not see anything.

Juan Carlos Honarato was standing on the sidewalk when he saw the Escalade going north on Sunol Drive. The Escalade stopped at Union Pacific Avenue and proceeded north on Sunol Drive at a high rate of speed. When turning west on Boswell Place the Escalade began to lose control and collided with a patrol car.

When the vehicles stopped a deputy exited a patrol car. The driver of the Escalade was moving his upper body to his left and moving his arms up and down, possibly reaching for a weapon. The driver appeared to be trying to exit the vehicle. Honarato heard 4-5 gunshots and dropped to the ground. When he stood again he saw the driver still moving back and forth in the driver's seat. Deputies approached and extracted him from the Escalade.

Ureta's Medical Condition

Ureta survived 8 gunshot wounds. Detectives described him as alert and understanding when they spoke to him on February 22, 2011. Ureta was advised of his Miranda rights, stated that he understood and declined to speak about the incident.

CONCLUSION

California law permits the use of deadly force in self-defense or in defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he actually and reasonably believed he or others were in imminent danger of great bodily injury or death.

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation. Graham v. Conner, (1989) 490 U.S. 386, 396-397.

The evidence examined in this investigation shows that Deputies Forlano and Mendoza saw Ureta point a handgun at them from a distance of approximately 5-10 feet. Ureta led the deputies on a pursuit which endangered the lives of the deputies, pedestrians and occupants of vehicles on the roadway. He was driving a stolen vehicle which he purposely used to strike the patrol car, in an attempt to escape apprehension. Not having seen Ureta discard the handgun, the deputies reasonably believed he intended to shoot them when they discharged their service weapons.

Deputy Hernandez did not see Ureta possess a weapon. However, he was aware that Ureta was wanted for assault with a deadly weapon upon a police officer. Therefore, when he heard the sound of gunfire and glass breaking he reasonably believed Ureta was firing at him. His response in firing 2-3 rounds in the direction of the suspect's vehicle was reasonable.

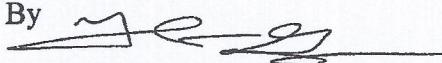
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Based on our examination of the evidence, we conclude that Deputies Forlano, Mendoza and Hernandez acted in lawful self-defense and defense of another when deadly force was used against Osvaldo Ureta. Therefore, we are closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By


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